86-586

Supreme Court, U.S.
FILED
SEP 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES
TERM, 1986

ROBERT HUDSON,
APPELLANT,
VS.

JAMES EDGETT AND THE PEOPLE OF THE
STATE OF N.Y., APPELLEE

JURISDICTIONAL STATEMENT

MOTION FOR LEAVE TO APPEAL FROM THE UNITED STATES 2ND CIRCUIT COURT OF APPEALS

Robert Hudson
Tonetta Lake Park
Brewter, New York
10509

Robert Palmer
Atty. for Appellee
Post Office Box 5249
90 Market Street
Poughkeepsie, N.Y.
12602

N.Y.S. Atty.General
2 World Trade Center
N.Y., N.Y. 10047

Governor of the State
of New York
Executive Offices
Albany, New York

QUESTION PRESENTED

Does Appellant under Article 1, Section 10, Clause 1 and the Fifth and Fourteenth Amendments to the Constitution of the United States have the right to defend his land and deed thereto in trial by jury to quiet his title against N.Y.S. Surveyor James Edgett, who's survey altered the boundaries and gave Mark E. Losee contention of ownership to Appellant's land.

LIST OF PARTIES

The parties to this proceeding are Robert Hudson, Appellant and James Edgett, Appellee.

TABLE OF CONTENTS

	Page
Questions Presented	i
Opinions Below	1
Jurisdictional Statement	2
Statutes Involved	4
Statement of the Case	7
Reasons for Granting Appeal ...	8
Conclusion	14

Appendix:

Notice of Appeal to the U.S. Supreme Court July 19, 1986	1a
Complaint Tranferred from Pine Plains Town Court to Town of Milan May 19, 1982	2a
Submission of Complaint to N.Y.S. Supreme Court from Milan Town Court June 10, 1983	3a
Dismissal of Complaint from Supreme Court, Dutchess Co. August 10, 1983	4a

TABLE OF CONTENTS

Appendix· Page

Appeal denied by the Appellate Division, 2nd Judicial Dept. of N.Y.S. Supreme Court April 2, 1984. ..... 5a

U.S. Supreme Court for the Southern District of N.Y. Dismissal of Complaint September, 1985 ..... 6a, 7a

U.S. District Court Magistrate Tyler, Dismissing Complaint .... 8a, 9a August 23, 1986

U.S. Court of Appeals for the the 2nd Circuit dismissing leave to appeal June 23, 1986 .... 10a

Deeds to Appellant's Property ... 11a- August 6, 1979 ... 15a

Real Property Map, Town of Pine Plains, Dutchess County, N.Y. Map #6770 June, 1982 .... 16a

Surveyor Edgett's Counterclaim July 14, 1982 ..... 17a,18a

Surveyor Edgett's Survey ..... November 23, 1981 19a

TABLE OF CONTENTS

Appendix Page

Note of Issue in the Supreme Court of Dutchess County, N.Y. February 22, 1983 ..... 20a

United States Court for the Southern District of N.Y. Appellant's Reply Brief in Denova Review September 18, 1985 ..... 21a

United States Court for the Southern District of N.Y. Duplicate Docket Sheet, 85 civ 2476 Original Lost 22a

United States Court for the Southern District of N.Y. Original Docket Sheet 85 civ 2476 ..... 23a & 24a

TABLE OF AUTHORITIES

CASES PAGE

Barkenthien v. People (1914)
212 NY 36, 105 NE 808, reh den
213 NY 554, 107 NE 1034. 9

Duffy v. Rodriquez (1910)
139 AD 755, 124 NYS 529. 8

Petition of White (1953,sup)
124 NYS 2d 748. 12

Varney v. Hudson
Dutchess County
NY 1984-2300 11

Whitney v. Considine Investing
Co. 200 AD 193, 192 NYS 957 ... 11

STATUTES

Constitution of New York State
Article One, Section Six 12

Constitution of New York State
Article One, Section Eleven 12

Constitution of the United States
Article One, Section Ten, Clause
One 12

Constitution of the United States
Fifth Amendment 12

TABLE OF AUTHORITIES
continued

PAGE

Constitution of the United States
Fourteenth Amendment 12

New York Civil Practice Law &
Rules, Section 4102, Demand of
trial by jury. Any party may
demand a trial by jury.

New York State Real Property Law
Article 12, Sections 370 to 435.. 9 & 12

Rule 75, Federal Rules of Civil
Procedures 11

OTHER

5 ALR3d 375, II In absence of
express statutory provision,
Section 3. General Rule 10

OPINION BELOW

Motion for leave to appeal was denied June 17, 1986 by the United States 2nd Circuit Court of Appeals 10a which upheld the order of Judge Leisure of the United States Court for the Southern District of New York of September 11, 1985 6a & 7a; which adopted the report of the U.S. Magistrate Tyler of August 23, 1985 8a & 9a which upheld the dismissal of appeal of the Appellate Division, 2nd Judicial Department of N.Y.S. dated April 2, 1984 5a which upheld the decision of the New York State Supreme Court, Judge Dickinson, dismissal of complaint 4a. Submission of complaint to the New York State Supreme Court by Milan Justice Gary Paschal dated May 10, 1983. 3a. Pine Plains Justice George I. Tenore transferred complaint from place

of venue to Milan Court, May 19, 1982. 2a

JURISDICTIONAL STATEMENT

Appellant appeals from the order of the New York State Supreme Court, Dutchess County, entered August 10, 1983, who denied Plaintiff trial by jury and dismissed complaint for failure to state a cause of action. 4a.

By Real Property Law, Article 12, Section 371 of New York State, the Appellate Division, Second Judicial Dept.,NY designates the Justices and rules of practice in Dutchess County, Title Part and upheld the orders of dismissal of complaint by the New York State Supreme Court.

The order of the United States Court for the Southern District of New York, dated September 11, 1985, denied trial by

jury and adopted the report of U.S. Magistrate Tyler which stated Appellant's property did not exist and that the court lacks subject matter jurisdiction over the State claim by virtue of the Eleventh Amendment and over the Edgett claim for want of a substantial federal question 8a & 9a. Leave to appeal was denied by the United States, 2nd Circuit Court of Appeals, dated June 17, 1986. Jurisdiction of the court is evoked by Article Three of the Constitution of the United States.

STATUTES INVOLVED

Article One, Section Ten, Paragraph One of the United States Constitution, "No State shall pass a law impairing the obligation of contracts".

Fifth Amendment to the United States Constitution, "No person shall be deprived of life, liberty or property without due process of law".

Fourteenth Amendment to the United States Constitution, Section One, Citizenship--Due process of law-- Equal protection. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article One, Section Six of the Constitution of the State of New York, "No person will be deprived of life, liberty or property without due process of law".

Article One, Section Eleven of the Constitution of the State of New York, "No person shall be denied the equal protection of the laws of this State or any subdivision thereof."

NEW YORK CIVIL PRACTICE LAW AND RULES

Section 4102, Demand of trial by jury. Any party may demand a trial by jury of any issue of fact triable of right by a jury by serving upon all other parties and filing a note of issue containing a demand

for trial by jury.

STATEMENT OF THE CASE

James Edgett, Surveyor, N.Y.S. License #37312, contracted with Appellant to survey, map and describe two adjacent properties on Hicks Hill Road rear in Pine Plains, N.Y. The properties 7.1 acres and 6.5 acres were deeded to Appellant by the County of Dutchess, N.Y. deeds, 11a through 15a. Edgett's survey 19a stated part of the property of 6.5 acres "no evidence of physical bounds found in field this portion of parcel appears to be part of Mark E. Losee lands L1403 P110; no evidence of physical bounds found in field" for the rest of this 6.5 acre property. The boundaries to the 7.1 acre property were enlarged to 7.7 acres taking .6 of one acre from the 6.5 acre property.

The dimensions of James Edgett's survey

were different than the survey done by Surveyors Cole and Trumble for the County of Dutchess in 1975 16a. This County tax mapping survey upheld the dimensions in Appellant's deeds 11a through 15a.

Though James Edgett was paid $1,800.00 for his stated survey, he filed a counter-claim for $501.04 more 17a & 18a for what he stated was a "determination of non-existance" of Appellant's property.

REASONS FOR GRANTING APPEAL

James Edgett's survey gave Mark E. Losee contention of ownership to Appellant's property. Appellant's complaint in action for registration of real estate under Article 12 need not set out statute which is general; it is sufficient to plead facts which give Appellant right to have his title registered. Duffy vs. Rodriquez (1910)

139 AD 755, 124 NYS 529.

N.Y.S. Surveyor James Edgett's survey and counterclaim under Article 12 of Real Property Law of N.Y. allowed for the registration of titles complaint and pleadings of the people as defendants create issues precisely as would such pleadings in ordinary action under code of civil procedure (now civil practice act) and those issues are triable by tribunal named in this section "according to the laws of this State and rules of the court" except that allegations of complaint denied by an answer may be presumptively proven by relevant facts stated in certificate of title, abstract and survey. (Barkenthien vs. People (1914) 112 NY 36, 105 NE 808 reh den 213 NY 554, 107 NE 1034.

The N.Y.S. Supreme Court decision 4a and the Magistrate's Report 8a & 9a

adopted by the U.S. District Court, denied the validity of the deed.

The doctrine of common source of title a well established rule in actions involving the title to or the right to possession of realty or an interest therein, that when the adverse parties claim title from the same source it is not necessary for the plaintiff to trace the title back of the common source. Ownership in the common source being admitted, it is presumed that his title is traced back to the sovereign (5 ALR3d 375, II. In absence of express statutory provision Section 3. General Rule).

The U.S. District Court order dismissing plaintiff's complaint on grounds "the court lacks subject matter jurisdiction" was unfounded. Plaintiff's reply brief, 21a

established jurisdiction in accordance with Rule 75 of the Federal Rules of Civil Procedure exhibited on U.S. District Court of New York duplicate docket sheet 22a.

The monetary value of the appellant's property was established at $50,000.00 for two acres, Varney vs. Hudson, Dutchess County, New York 1984-2300.

In the District Court Complaint, appellant stated, "tools and equipment were brought to the property, half an acre of trees were cleared and preparations were being made to prevent nutrient rich soil from being washed away. Constructive possession following legal title in the plaintiff's, where no actual hostile occupancy is shown, is sufficient to enable plaintiff to maintain an action to remove a cloud on title. Whitney v Considine Investing Co. 200 AD 193, 192 NYS 957.

The very purpose of registering titles under Article 12 of Real Property Law is to fix the ownership of land beyond question and to set up a procedure by which title of land may be determined with certainty and ease, Petition of White (1953,Sup) 124 NYS 2d 748.

Appellant's money and man hours exhausted to clear Title were $12,500.00 and 2,300 man hours.

Article One, Section Ten, Paragraph One of the United States Constitution forbad the State of New York to impair the obligation of the deed, the contract. The words against appellant's land were Surveyor Edgett's alone.

Appellant, under the Constitution of the United States, Amendments Five and Fourteen and under Article One, Section Six and Eleven of the Constitution of the

State of New York has the right to clear his title.

CONCLUSION

For the foregoing reasons, Appellant does pray the court appeal be granted.

Respectfully submitted,

_____
Robert Hudson

Tonetta Lake Park
Brewster, New York 10509

APPENDIX

UNITED STATES SUPREME COURT

ROBERT HUDSON,

PLAINTIFF

VS.

NOTICE OF APPEAL

JAMES EDGETT AND THE PEOPLE OF THE STATE OF NEW YORK,

DEFENDANT

I, Robert Hudson appeal to the Supreme Court of the United States from the order of the United States Second Circuit Court of Appeals which denied leave to appeal because of excusable neglect, dated 6/23/86; which upheld the judgement order of the United States District Court for the Southern District of New York, Judge Leisure, date 9/11/85 and the order of the New York State Supreme Court, Judge Dickens, dated 8/10/83, denying trial by jury to recover land.

Robert Hudson
Appellant

TOWN JUSTICE COURT
PINE PLAINS, N.Y. 12567

5/19/82

CC: Justice Laibach
T/O Milan, N.Y.

Dear Mr. Hudson,

Your claim was sent to the wrong court. The defendant is from Town of Milan, and I took liberty to endorse your Money Order over to that town and all papers to that town, Town Justice Laibach.

Sincerely,

George I. Tenore

TOWN OF MILAN

Gary J. Paschal
Milan Town Justice
Route 199
Post Office Box 42
Red Hook, N.Y.

June 10, 1983

Mr. Robert Hudson
3120 Hull Avenue
Bronx, N.Y. 10467

RE: Hudson vs. Edgett

Dear Mr. Hudson:

I am in receipt of your document of June 2, 1983 in which you refer to Supreme Court Case #4743. This is to inform you that I will abide the event in a superior court.

Sincerely,

Gary Paschal,
Milan Town Justice

SUPREME COURT STATE OF NEW YORK
TRIAL/SPECIAL TERM PART DUTCHESS COUNTY

Hon. Fred A. Dickinson

Robert Hudson, Plaintiff	Index No.4273
vs.	
James C. Edgett, Defendant	

Upon the foregoing papers it is ordered that this motion is granted to the extent that the so-called complaint is dismissed for failure to state a cause of action.

Fred A. Dickinson
August 10, 1983

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on April 2, 1984.

Hon. Guy Mangano, Justice Presiding,
Hon. David T. Gibbons,
Hon. Moses M. Weinstein,
Hon. James F. Niehoff, Asso. Justices

Robert Hudson,	:	
Appellant,	:	Order on
v	:	Appeals from
James Edgett,	:	Orders.
Respondent.	:	
	:	

It is ORDERED that the appeal from the purported order dated July 20, 1983, is hereby dismissed, without costs or disbursements and it is further ORDERED that the the order, dated August 10, 1983, appealed from is hereby unanimously affirmed, without costs or disbursements.

Enter:
Irving N. Selkin
Clerk of the Appellate Division
April 2, 1984

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT HUDSON, PLAINTIFF -AGAINST-	ORDER :85 Civ. 2476 (PKL)
JAMES EDGETT and THE PEOPLE OF THE STATE OF NEW YORK, DEFENDANT.	:

LEISURE, District Judge:

This action, purporting to be an appeal from a decision of the Appellate Division, Second Department, was filed on March 29, 1985. By order of April 8, 1985, I referred the case to Hon. Joel J. Tyler, United States Magistrate, for his findings and recommendations.

Having reviewed the papers submitted by the parties, I conclude that Magistrate Tyler's report should be adopted. This court lacks subject matter jurisdiction over the complaint and this case is

accordingly dismissed.

SO ORDERED.

Dated: New York, New York
September, 1985

Peter K. Leisure
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT HUDSON,
PLAINTIFF
VS.
JAMES EDGETT AND THE PEOPLE OF THE STATE OF NEW YORK,
DEFENDANTS.

REPORT AND RECOMMENDATION
85 CIV. 2476 (PKL)
U.S. DISTRICT COURT S.D.N.Y.
FILED 8/23/86

TO THE HONORABLE PETER K. LEISURE, U.S.D.J.,

CONCLUSION

For the reasons hereinafter stated, defendants' motion to dismiss should be granted on the grounds that the court lacks subject matter jurisdiction over plaintiff's claims.

The results of Edgett's survey unexpectantly revealed that both parcels Hudson purchased from the County did not exist.

Hudson's claims suffer from other impediments in that the court lacks subject matter jurisdiction over the state claim by virtue of the Eleventh Amendment and over Edgett's claim for want of a substan-

tial Federal question.

RECOMMENDATION

For the foregoing reasons, we recommend that the defendant's motion be granted and that the complaint be dismissed.

Dated: White Plains, New York
August 21, 1985

Respectfully submitted,

Joel J. Tyler
United States Magistrate

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

ROBERT HUDSON, APPELLANT, VS. JAMES EDGETT AND ANO., APPELLEES.	86-8032 U.S. COURT OF APPEALS 2ND CIRCUIT FILED 6/23/86 E.GOLDSMITH, CLERK

A motion having been made herein by appellant pro se for leave to appeal.

Upon consideration thereof, it is ordered that said motion be and it hereby is denied.

Thoms J. Meskill, U.S.C.J.

Amalya L. Kearse, U.S.C.J.

George C. Pratt, U.S.C.J.

Liber 1515 Page 634, 635

This Indenture made the 6th day of August in the year one thousand nine hundred and seventy nine between Dutchess County a municipal corporation by its County Legislature, party of the first part, AND Robert Hudson of 3124 Webster Avenue, Bronx County of the State of New York 10467 party of the second part.

This Indenture Witnesseth, that the said party of the first part, in consideration of the said sum of Nine Hundred and n0/100 ($900.00) Dollars lawful money of the United States, paid by the party of the second part, does hereby remise release and quitclaim unto the party of the second part his heirs and assigns forever. All that tract or parcel of land situate in the Town of Pine Plains Dutchess County, New York described in

a deed to the County of Dutchess from M. Philip Amodeo as Finance Commissioner of the Dutchess County dated March 15, 1979 and recorded in the Dutchess County Clerk's office March 15, 1979 in Liber 1504 of deeds, page 75 as follows: County Tax Map Grid #12-6770-00-316872-00 of 6.5 acres of land together with the appurtenances and all the estate and right of the party of the first part in and to said premises. To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever. In Witness Whereof, the party of the first part has caused this instrument to be signed by the County Executive and Clerk of the County Legislature of the County of Dutchess and the seal of said County to be hereunto affixed the day and year first above

written.

County of Dutchess

Lucille P. Pattison
County Executive
Joan A. Traver
Clerk, County Legislature

Liber 1515 Page 632, 633

This Indenture, made the 6th day of August, in the year one thousand nine hundred and seventy nine Between Dutchess County, a municipal corporation by its County Legislature party of the first part AND Robert Hudson of 3124 Webster Avenue, Bronx County and State of New York 10467 party of the second part.

This Indenture Witnesseth, that the said party of the first part, in consideration of the said sum of EIGHT HUNDRED ($800.00) Dollars lawful money of the United States, paid by the party of the second part, does hereby remise release and quitclaim unto the party of the second

part his heirs and assigns forever. All that tract or parcel of land situate in the Town of Pine Plains, Dutchess County, New York described in a deed to the County of Dutchess from M. Philip Amodeo as Finance Commissioner of the Dutchess County Clerk's Office March 15, 1979 in Liber 1504 of deeds, page 75 as follows: County Tax Map #12-6770-00-285878-00 of 7.1 acres of land together with the appurtenances and all the estate and right of the party of the first part in and to said premises. To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever. In Witness Whereof, the party of the first part has caused this instrument to be signed by the County Executive and the Clerk of the County Legislature of the County of Dutchess and the seal of said County to be hereunto

affixed the day and year first above written.

County of Dutchess

Lucille P. Pattison
County Executive
Joan A. Traver
Clerk, County Legislature

Copy of original deeds in Milan Town Court, given to Justice Richard Laibach.

A true copy, Raymond F. Burghardt, Clerk
United States Court for the Southern
District, New York.

REAL PROPERTY MAP, TOWN OF PINE PLAINS
DUTCHESS COUNTY, NEW YORK 6770

I George Carlquist hereby certify that I have compared this document with the original thereof on file in the Real Property Tax Service office and find the attached document to be a true and accurate copy of the original.

Clerk's Minutes 1982/4743, W. Steinhaus

SURVEYOR EDGETT'S COUNTERCLAIM

James C. Edgett
Land Surveyor
New York State License 37212

Robert Hudson
3120 Hull Avenue
Bronx, New York 10467

July 14, 1982
Re:Survey No. 81045

Dear Sir:

In view of existing circumstances, I am now billing you for the additional work which was done to substantiate the the non-existing second parcel which the tax mapping called parcel No.316872.

Amount due $501.74.

Yours truly,

James C. Edgett

cc: Attorney Woody Klose
Red Hook, New York

SURVEYOR EDGETT'S COUNTERCLAIM CONTINUED

Klose & Melley
Attorneys at Law
35 East Market Street
Red Hook, New York 12571

Mr. Robert Hudson
3120 Hull Avenue
Bronx, New York 10467

Re: Hudson vs. Edgett
Town of Milan

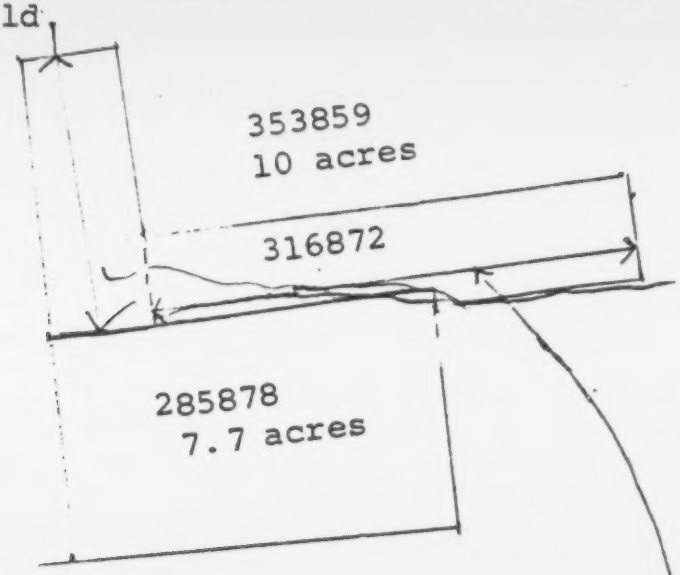
Dear Mr. Hudson,

Please find enclosed a copy of Mr. Edgett"s bill dated July 14, 1982, which we have asserted as a counterclaim and will expect to try Friday night.

Cordially,

Klose & Melley

No evidence of physical bounds found in this field.



This portion of parcel appears to be part of Mark E. Losee lands L1403 P110, tax map grid #353859.

JAMES EDGETT'S SURVEY

State of New York Clerk's Minutes
County of Dutchess 1982/4743
This is a true copy of the original
William R. Steinhaus,

A TRUE COPY 85civ2476
RAYMOND F. BURGHART
CLERKS DEPUTY UNITED STATES DISTRICT

NOTE OF ISSUE

Index No. 4743

Supreme Court, Dutchess County, N.Y.

Robert Hudson, Plaintiff :	NOTICE FOR TRIAL Trial by jury of 6 jurors demanded
against :	Filed by Robert Hudson
James C. Edgett, Defendant :	Date summons served 1/24/83

Other Tort-Education Law, Section 7203, Definition of practice of land surveying.

Contract- Breached contract to survey land. Defendant took $1,800.00 and never did survey.

Amount Demanded - $1,800.00

Other Relief- Removal of bar preventing survey, court costs and interest.

STATEMENT OF READINESS

This action is ready for trial.

2/14/83 Robert Hudson, Plaintiff

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT

ROBERT HUDSON, PLAINTIFF VS. JAMES EDGETT AND THE PEOPLE OF THE STATE OF NY, DEFENDANTS	PLAINTIFF'S REPLY TO DEF'S AFFIDAVIT IN RESPONSE TO OBJECTIONS TO MAGISTRATES REPORT. 85 CIV 2476 JUDGE LEISURE

The mature and ancient hardwood trees of maple, oak ash, over eighty feet tall, exist only upon the six acres in question and the value of these trees is $15,000.00.

For twenty years I've worked with all phases of wood to sustain a living for myself and my family. For seventeen years I've been in the carpenter's union and I attest to the value of these trees.

True Copy- Raymond F. Burchardt
Clerk
United States District
Court for the Southern
District of N.Y.

DUPLICATE DOCKET SHEET

ORIGINAL MISSING
CIVIL DOCKET CONTINUATION SHEET

Plaintiff	Defendant	Docket No.
Robert Hudson	James Edgett et al	85 civ 2476 (PKL)

Date	NR.	Proceedings
9/18/85	--	Filed Pltff's Reply to deft's affdvt in response to objections to Mag.'s Report.
1//'86	--	Fld. Pltff's Motion for Excusable Neglect.
1/ /86	--	Fld. Pltff Notice of Motion for excusable neglect. RE DATE: not indicated

OK
N.W.
3/26/86

A TRUE COPY
RAYMOND F. BURGHARDT
CLERK

BY Theresa Kieling
Deputy Clerk

85 civ. 2476 Robert Hudson v. James Edgett, Et Al.

Date	NR	Proceedings
3/29/85	1	Filed Complt. issued summons and notice purs. to 28 U.S.C. 636(c) ...Jury Trial Demanded
4/9/85	2	Filed ORDER that this action is hereby referred to Mag. Joel J. Tyler for all purposes as ind...So Ordered Leisure J
4/16/85	3	Filed ANSEWER of deft. to complaint.
4/23/85	4	Fld. Notice and Acknowledgement of receipt of S & C. served. JAMES C. EDGETT by self 4/19/85
5/22/85	5	Filed ANSWER of deft James Edgett to the complaint.
7/8/85	6	Filed Deft Edgett's Affirmation Notice of Motion & Notice of Issue for an order purs to Rule 12 dismissing the compl. of the pltff. Ret;8/8/85 before Mag. Tyler. ORIG. TO MAG. TYLER received in night deposit box on 7/8/85.
7/8/85	7	Filed Deft Edgett's Memo of Law in support of deft's motion to dismiss. ORIG. TO MAG. TYLER received in night deposit deposit box on 7/8/85.

Date	NR.	PROCEEDINGS
7/9/85	8	Filed Deft's Affdvt & Notice of Motion for an order dismissing the complaint. Ret 7/17/85
7/12/85	9	Fld. Pltff's Affidavit of Morris Weinstein, Assoc.Atty. Gen. of N.Y. State, in opposition of motion to dismiss Complaint.
8/23/85	10	Filed REPORT & RECOMMENDATION of Mag. Tyler to J. Leisure that it is recommended that the deft's motion be granted and the complaint be dismissed
8/30/85	11.	Filed Pltff's Affdvt & Motion for an order for de novo review and objection to Mag's Report. Ret; not indicated.
9/13/85	12	Filed Defn's Affdvt of R. Palmer in response to objection to Mag's Report,
9/11/85	13	Filed ORDER that having reviewed the papers submitted by the parties, I conclude the Mag. Tyler's report should be adopted. This Court lacks subject matter jurisdiction over the complaint and this case is accordingly dismissed ...So Ordered. Leisure J. CM, 9/12/85 A TRUE COPY, RAYMOND BURGHARDT Clerk of U.S.C. for the S.D.NY